

**ASSEMBLY BILL**

**No. 1708**

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**Introduced by Assembly Member Villines**

February 1, 2010

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An act to amend Section 1765.1 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1708, as introduced, Villines. Insurance: surplus line brokers.

Existing law limits the ability of a surplus line broker to place any coverage with a nonadmitted insurer, as specified. In order for a nonadmitted insurer to qualify for coverage it must demonstrate financial stability, as defined.

Existing law defines financial stability to include, but not be limited to, having a total of capital and surplus of at least \$15,000,000 with the type of assets to be used in calculating capital and surplus being at least \$15,000,000 in the form of cash, securities of a specified character, or in readily marketable securities, as defined.

This bill would instead require the total capital and surplus requirement be at least \$45,000,000 and the amount of assets to be used in calculating capital and surplus that consist of cash and those other specified types of securities to be at least \$25,000,000.

Existing law also defines financial stability, in the case of an Insurance Exchange created and authorized under the laws of individual states, as maintaining capital and surplus of not less than \$50,000,000 in the aggregate, with the type of assets to be used in calculating capital and surplus being at least \$15,000,000 in the form of cash, securities of a specified character, or in readily marketable securities. In the case of an Insurance Exchange that maintains funds for the protection of all

Insurance Exchange policyholders, each individual syndicate seeking to accept surplus line placements of risks resident, located, or to be performed in this state are required to maintain minimum capital and surplus of not less than \$6,400,000. Each individual syndicate is required to increase the capital and surplus required by \$1,000,000 each year until it attains a capital and surplus of \$15,000,000. In the case of Insurance Exchanges that do not maintain funds for the protection of all Insurance Exchange policyholders, each individual syndicate seeking to accept surplus line placement of risks resident, located, or to be performed in this state are required to meet the specified capital and surplus requirements applicable to nonadmitted insurers of at least \$15,000,000 with the type of assets to be used in calculating capital and surplus being at least \$15,000,000 of that in the form of cash, securities of a specified character, or in readily marketable securities.

This bill would instead require the amount of assets to be used in calculating capital and surplus to be at least \$25,000,000 in the form of cash, securities of a specified character, or in readily marketable securities. The bill would delete the minimum capital and surplus requirement formula for an individual syndicate with regard to an Insurance Exchange that maintains funds for the protection of all Insurance Exchange policyholders, and would instead require each syndicate to maintain capital and surplus of not less than \$45,000,000. The bill would also delete the capital and surplus requirements regarding each syndicate of Insurance Exchanges that do not maintain funds for the protection of all Insurance Exchange policyholders.

The bill would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1765.1 of the Insurance Code is amended
- 2 to read:
- 3 1765.1. No surplus line broker shall place any coverage with
- 4 a nonadmitted insurer unless the insurer is domiciled in the
- 5 Republic of Mexico and the placement covers only liability arising
- 6 out of the ownership, maintenance, or use of a motor vehicle,
- 7 aircraft, or boat in the Republic of Mexico, or, at the time of
- 8 placement, the nonadmitted insurer meets the following
- 9 requirements:

(a) (1) Has established its financial stability, reputation, and integrity, for the class of insurance the broker proposes to place, by satisfactory evidence submitted to the commissioner through a surplus line broker.

(2) Meets one of the following requirements with respect to its financial stability:

(A) Has capital and surplus that together total at least ~~fifteen~~ *forty-five* million dollars ~~(\$15,000,000)~~ *(\$45,000,000)*. “Capital” shall be as defined in Section 36. “Surplus” shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least ~~fifteen~~ *twenty-five* million dollars ~~(\$15,000,000)~~ *(\$25,000,000)* shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States’ national or principal regional securities exchanges. The remaining assets shall be in the form just described, or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term “same character and quality” shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by any limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners’ Accounting Practices and Procedures Manual in determining whether assets substantially similar to those described in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow any asset that is not of a sound quality, or that he or she deems to create an unacceptable risk of loss to the insurer or to policyholders. Letters of credit will not qualify as assets in the calculation of surplus. If *the capital and surplus together total* less than ~~fifteen~~ *forty-five* million dollars ~~(\$15,000,000)~~ *(\$45,000,000)*, the commissioner ~~has~~ *shall have* affirmatively found that the capital and surplus is adequate to protect California policyholders. The commissioner shall consider, on determining whether to make this finding, factors such as quality

1 of management, the capital and surplus of any parent company,  
2 the underwriting profit and investment income trends, and the  
3 record of claims payment and claims handling practices of the  
4 nonadmitted insurer.

5 (B) In the case of an “Insurance Exchange” created and  
6 authorized under the laws of individual states, maintains capital  
7 and surplus of not less than fifty million dollars (\$50,000,000) in  
8 the aggregate. “Capital” shall be as defined in Section 36. “Surplus”  
9 shall be defined as assets exceeding the sum of liabilities for losses  
10 reported, expenses, taxes, and all other indebtedness and  
11 reinsurance of outstanding risks as provided by law and paid-in  
12 capital in the case of an insurer issuing or having outstanding shares  
13 of capital stock. The type of assets to be used in calculating capital  
14 and surplus shall be as follows: at least ~~fifteen~~ *twenty-five* million  
15 dollars ~~(\$15,000,000)~~ *(\$25,000,000)* shall be in the form of cash,  
16 or securities of the same character and quality as specified in  
17 Sections 1170 to 1182, inclusive, or in readily marketable securities  
18 listed on regulated United States’ national or principal regional  
19 securities exchanges. The remaining assets shall be in the form  
20 just described, or in the form of investments of substantially the  
21 same character and quality as described in Sections 1190 to 1202,  
22 inclusive. In calculating capital and surplus under this section, the  
23 term “same character and quality” shall permit, but not require,  
24 the commissioner to approve assets maintained in accordance with  
25 the laws of another state or country. The commissioner shall be  
26 guided by any limitations, restrictions, or other requirements of  
27 this code or the National Association of Insurance Commissioners’  
28 Accounting Practices and Procedures Manual in determining  
29 whether assets substantially similar to those described in Sections  
30 1190 to 1202, inclusive, qualify. The commissioner shall retain  
31 the discretion to disapprove or disallow any asset that is not of a  
32 sound quality, or that he or she deems to create an unacceptable  
33 risk of loss to the insurer or to policyholders. Letters of credit shall  
34 not qualify as assets in the calculation of surplus. ~~In the case of an~~  
35 ~~Insurance Exchange which maintains funds for the protection of~~  
36 ~~all Insurance Exchange policyholders, each~~ *Each* individual  
37 syndicate seeking to accept surplus line placements of risks  
38 resident, located, or to be performed in this state shall maintain  
39 minimum capital and surplus of not less than ~~six million four~~  
40 ~~hundred thousand dollars (\$6,400,000).~~ *Each individual syndicate*

1 shall increase the capital and surplus required by this paragraph  
2 by one million dollars (\$1,000,000) each year until it attains a  
3 capital and surplus of fifteen million dollars (\$15,000,000). In the  
4 case of Insurance Exchanges that do not maintain funds for the  
5 protection of all Insurance Exchange policyholders, each individual  
6 syndicate seeking to accept surplus line placement of risks resident,  
7 located, or to be performed in this state shall meet the capital and  
8 surplus requirements of subparagraph (A) of this paragraph  
9 *forty-five million dollars (\$45,000,000).*

10 (C) In the case of a syndicate that is part of a group consisting  
11 of incorporated individual insurers, or a combination of both  
12 incorporated and unincorporated insurers, that at all times maintains  
13 a trust fund of not less than one hundred million dollars  
14 (\$100,000,000) in a qualified United States financial institution  
15 as security to the full amount thereof for the United States surplus  
16 line policyholders and beneficiaries of direct policies of the group,  
17 including all policyholders and beneficiaries of direct policies of  
18 the syndicate, and the full balance in the trust fund is available to  
19 satisfy the liabilities of each member of the group of those  
20 syndicates, incorporated individual insurers or other unincorporated  
21 insurers, without regard to their individual contributions to that  
22 trust fund, and the trust complies with the terms of and conditions  
23 specified in paragraph (1) of subdivision (b), the syndicate is  
24 excepted from the capital and surplus requirements of subparagraph  
25 (A) of paragraph (2). The incorporated members of the group shall  
26 not be engaged in any business other than underwriting as a  
27 member of the group and shall be subject to the same level of  
28 solvency regulation and control by the group's domiciliary  
29 regulator as are the unincorporated members.

30 (b) (1) In addition, to be eligible as a surplus line insurer, an  
31 insurer not domiciled in one of the United States or its territories  
32 shall have in force in the United States an irrevocable trust account  
33 in a qualified United States financial institution, for the protection  
34 of United States policyholders, of not less than five million four  
35 hundred thousand dollars (\$5,400,000) and consisting of cash,  
36 securities acceptable to the commissioner which are authorized  
37 pursuant to Sections 1170 to 1182, inclusive, readily marketable  
38 securities acceptable to the commissioner that are listed on a  
39 regulated United States national or principal regional security  
40 exchange, or clean and irrevocable letters of credit acceptable to

1 the commissioner and issued by a qualified United States financial  
2 institution. The trust agreement shall be in a form acceptable to  
3 the commissioner. The funds in the trust account may be included  
4 in any calculation of capital and surplus, except letters of credit,  
5 which shall not be included in any calculation.

6 (2) In the case of a syndicate seeking eligibility under  
7 subparagraph (C) of paragraph (2) of subdivision (a), the syndicate  
8 shall, in addition to the requirements of that subparagraph, at a  
9 minimum, maintain in the United States a trust account in an  
10 amount satisfactory to the commissioner that is not less than the  
11 amount required by the domiciliary state of the syndicate's trust.  
12 The trust account shall comply with the terms and conditions  
13 specified in paragraph (1).

14 (3) In the case of a group of incorporated insurers under common  
15 administration that maintains a trust fund of not less than one  
16 hundred million dollars (\$100,000,000) in a qualified United States  
17 financial institution for the payment of claims of its United States  
18 policyholders, their assigns, or successors in interest and that  
19 complies with the terms and conditions of paragraph (1) that has  
20 continuously transacted an insurance business outside the United  
21 States for at least three years, that is in good standing with its  
22 domiciliary regulator, whose individual insurer members maintain  
23 standards and a financial condition reasonably comparable to  
24 admitted insurers, that submits to this state's authority to examine  
25 its books and bears the expense of examination, and that has an  
26 aggregate policyholder surplus of ten billion dollars  
27 (\$10,000,000,000), the group is excepted from the capital and  
28 surplus requirements of subdivision (a).

29 (c) Has caused to be provided to the commissioner the following  
30 documents:

31 (1) The financial documents as specified below, each showing  
32 the insurer's condition as of a date not more than 12 months prior  
33 to submission:

34 (A) A copy of an annual statement, prepared in the form  
35 prescribed by the NAIC. For an alien insurer, in lieu of an annual  
36 statement, a licensee may submit a form as set forth by regulation  
37 and as prepared by the insurer, and, if listed by the IID, a copy of  
38 the complete information as required in the application for listing  
39 by the IID.

1 (B) A copy of an audited financial report on the insurer's  
2 condition that meets the standards of subparagraph (D) for foreign  
3 insurers or subparagraph (E) for alien insurers.

4 (C) If the insurer is an alien:

5 (i) A certified copy of the trust agreement referenced in  
6 subdivision (b).

7 (ii) A verified copy of the most recent quarterly statement or  
8 list of the assets in the trust.

9 (D) Financial reports filed pursuant to this section by foreign  
10 insurers shall conform to the following standards:

11 (i) Financial documents shall be certified.

12 (ii) An audited financial report shall constitute a supplement to  
13 the insurer's annual statement, as required by the annual statement  
14 instructions issued by the NAIC.

15 (iii) An audited financial report shall be prepared by an  
16 independent certified public accountant or accounting firm in good  
17 standing with the American Institute of Certified Public  
18 Accountants and in all states where licensed to practice; and be  
19 prepared in conformity with statutory accounting practices  
20 prescribed, or otherwise permitted, by the insurance regulator of  
21 the insurer's domiciliary jurisdiction.

22 (iv) An audited financial report shall include information on the  
23 insurer's financial position as of the end of the most recent calendar  
24 year, and the results of its operations, cashflows, and changes in  
25 capital and surplus for the year then ended.

26 (v) An audited financial report shall be prepared in a form and  
27 using language and groupings substantially the same as the relevant  
28 sections of the insurer's annual statement filed with its domiciliary  
29 jurisdiction, and presenting comparatively the amounts as of  
30 December 31 of the most recent calendar year and the amounts as  
31 of December 31 of the preceding year.

32 (E) Financial reports filed pursuant to this section by alien  
33 insurers shall conform to the following standards:

34 (i) Except as provided in clause (ii) of subparagraph (C),  
35 financial documents should be certified, if certification of a  
36 financial document is not available, the document shall be verified.

37 (ii) Financial documents should be expressed in United States  
38 dollars, but may be expressed in another currency, if the exchange  
39 rate for the other currency as of the date of the document is also  
40 provided.

(iii) The responses provided pursuant to subparagraph (A) of paragraph (1) on the form submitted in lieu of an annual statement should follow the most recent ISI Guide to Alien Reporting Format, “Standard Definitions of Accounting Items.” Responses that do not agree with a standard definition shall be fully explained in the form.

(iv) An audited financial report shall be prepared by an independent licensed auditor in the insurer’s domiciliary jurisdiction or in any state.

(v) An audited financial report shall be prepared in accord with either (I) Generally Accepted Auditing Standards that prescribe Generally Accepted Accounting Principles, or (II) International Accounting Standards as published and revised from time to time by the International Auditing Guidelines published by the International Auditing Practice Committee of the International Federation of Accountants; and shall include financial statement notes and a summary of significant accounting practices.

(F) The commissioner may accept, in lieu of a document described above, any certified or verified financial or regulatory document, statement, or report if the commissioner finds that it possesses reliability and financial detail substantially equal to or greater than the document for which it is proposed to be a substitute.

(G) If one of the financial documents required to be submitted under subparagraphs (A) and (B) is dated within 12 months of submission, but the other document is not so dated, the licensee may use the outdated document if it is accompanied by a supplement. The supplement must meet the same requirements which apply to the supplemented document, and must update the outdated document to a date within the prescribed time period, preferably to the same date as the nonsupplemented document.

(2) A certified copy of the insurer’s license issued by its domiciliary jurisdiction, plus a certification of good standing, certificate of compliance, or other equivalent certificate, from either that jurisdiction or, if the jurisdiction does not issue those certificates, from any state where it is licensed.

(3) Information on the insurer’s agent in California for service of process, including the agent’s full name and address. The agent’s address must include a street address where the agent can be reached during normal business hours.



1 (4) The complete street address, mailing address, and telephone  
2 number of the insurer's principal place of business.

3 (5) A certified or verified explanation, report, or other statement,  
4 from the insurance regulatory office or official of the insurer's  
5 domiciliary jurisdiction, concerning the insurer's record regarding  
6 market conduct and consumer complaints; or, if that information  
7 cannot be obtained from that jurisdiction, then any other  
8 information that the licensee can procure to demonstrate a good  
9 reputation for payment of claims and treatment of policyholders.

10 (6) A verified statement, from the insurer or licensee, on whether  
11 the insurer or any affiliated entity is currently known to be the  
12 subject of any order or proceeding regarding conservation,  
13 liquidation, or other receivership; or regarding revocation or  
14 suspension of a license to transact insurance in any jurisdiction;  
15 or otherwise seeking to stop the insurer from transacting insurance  
16 in any jurisdiction. The statement shall identify the proceeding by  
17 date, jurisdiction, and relief or sanction sought; and shall attach a  
18 copy of the relevant order.

19 (7) A certified copy of the most recent report of examination  
20 or an explanation if the report is not available.

21 (8) A list of all California surplus line brokers authorized by  
22 the insurer to issue policies on its behalf, and any additions to or  
23 deletions from that list.

24 (d) (1) Has provided any additional information or  
25 documentation required by the commissioner that is relevant to  
26 the financial stability, reputation, and integrity of the nonadmitted  
27 insurer. In making a determination concerning financial stability,  
28 reputation, and integrity of the nonadmitted insurer, the  
29 commissioner shall consider any analyses, findings, or conclusions  
30 made by the National Association of Insurance Commissioners  
31 (NAIC) in its review of the insurer for purposes of inclusion on  
32 or exclusion from the list of authorized nonadmitted insurers  
33 maintained by the NAIC. The commissioner may, but shall not be  
34 required to, rely on, adopt, or otherwise accept any analyses,  
35 findings, or conclusions of the NAIC, as the commissioner deems  
36 appropriate. In the case of a syndicate seeking eligibility under  
37 subparagraph (C) of paragraph (2) of subdivision (a), the  
38 commissioner may, but shall not be required to, rely on, adopt, or  
39 otherwise accept any analyses, findings, or conclusions of any  
40 state, as the commissioner deems appropriate, as long as that state,

1 in its method of regulation and review, meets the requirements of  
2 paragraph (2).

3 (2) The regulatory body of the state shall regularly receive and  
4 review the following: (A) an audited financial statement of the  
5 syndicate, prepared by a certified or chartered public accountant;  
6 (B) an opinion of a qualified actuary with regard to the syndicate's  
7 aggregate reserves for payment of losses or claims and payment  
8 of expenses of adjustment or settlement of losses or claims; (C) a  
9 certification from the qualified United States financial institution  
10 that acts as the syndicate's trustee, respecting the existence and  
11 value of the syndicate's trust fund; and (D) information concerning  
12 the syndicate's or its manager's operating history, business plan,  
13 ownership and control, experience and ability, together with any  
14 other pertinent factors, and any information indicating that the  
15 syndicate or its manager make reasonably prompt payment of  
16 claims in this state or elsewhere. The regulatory body of the state  
17 shall have the authority, either by law or through the operation of  
18 a valid and enforceable agreement, to review the syndicate's assets  
19 and liabilities and audit the syndicate's trust account, and shall  
20 exercise that authority with a frequency and in a manner  
21 satisfactory to the commissioner.

22 (e) Has established that:

23 (1) All documents required by subdivisions (c) and (d) have  
24 been filed. Each of the documents appear after review to be  
25 complete, clear, comprehensible, unambiguous, accurate, and  
26 consistent.

27 (2) The documents affirm that the insurer is not subject in any  
28 jurisdiction to an order or proceeding that:

29 (A) Seeks to stop it from transacting insurance.

30 (B) Relates to conservation, liquidation, or other receivership.

31 (C) Relates to revocation or suspension of its license.

32 (3) The documents affirm that the insurer has actively transacted  
33 insurance for the three years immediately preceding the filing made  
34 under this section, unless an exemption is granted. As used in this  
35 paragraph, "insurer" does not include a syndicate of underwriting  
36 entities. The commissioner may grant an exemption if the licensee  
37 has applied for exemption and demonstrates either of the following:

38 (A) The insurer meets the condition for any exception set forth  
39 in subdivision (a), (b), or (c) of Section 716.

1 (B) If the insurer has been actively transacting insurance for at  
2 least 12 months, and the licensee demonstrates that the exemption  
3 is warranted because the insurer's current financial strength,  
4 operating history, business plan, ownership and control,  
5 management experience, and ability, together with any other  
6 pertinent factors, make three years of active insurance transaction  
7 unnecessary to establish sufficient reputation.

8 (4) The documents confirm that the insurer holds a license to  
9 issue insurance policies (other than reinsurance) to residents of  
10 the jurisdiction that granted the license unless an exemption is  
11 granted. The commissioner may grant an exemption if the licensee  
12 has applied for an exemption and demonstrates that the exemption  
13 is warranted because the insurer proposes to issue in California  
14 only commercial coverage, and is wholly owned and actually  
15 controlled by substantial and knowledgeable business enterprises  
16 that are its policyholders and that effectively govern the insurer's  
17 destiny in furtherance of their own business objectives.

18 (5) The information filed pursuant to paragraph (5) of  
19 subdivision (c) or otherwise filed with or available to the  
20 commissioner, including reports received from California  
21 policyholders, shall indicate that the insurer makes reasonably  
22 prompt payment of claims in this state or elsewhere.

23 (6) The information available to the commissioner shall not  
24 indicate that the insurer offers in California a licensee products or  
25 rates that violate any provision of this code.

26 (f) Has been placed on the list of eligible surplus line insurers  
27 by the commissioner. The commissioner shall establish a list of  
28 all surplus line insurers that have met the requirements of  
29 subdivisions (a) to (e), inclusive, and shall publish a master list at  
30 least semiannually. Any insurer receiving approval as an eligible  
31 surplus line insurer shall be added by addendum to the list at the  
32 time of approval, and shall be incorporated into the master list at  
33 the next date of publication. If an insurer appears on the most  
34 recent list, it shall be presumed that the insurer is an eligible surplus  
35 line insurer, unless the commissioner or his or her designee has  
36 mailed or causes to be mailed notice to all surplus line brokers that  
37 the commissioner has withdrawn the insurer's eligibility. Upon  
38 receipt of notice, the surplus line broker shall make no further  
39 placements with the insurer. Nothing in this subdivision shall limit  
40 the commissioner's discretion to withdraw an insurer's eligibility.

(g) (1) Except as provided by paragraph (2), whenever the commissioner has reasonable cause to believe, and determines after a public hearing, that any insurer on the list established pursuant to subdivision (f), (A) is in an unsound financial condition, (B) does not meet the eligibility requirements under subdivisions (a) to (e), inclusive, (C) has violated the laws of this state, or (D) without justification, or with a frequency so as to indicate a general business practice, delays the payment of just claims, the commissioner may issue an order removing the insurer from the list. Notice of hearing shall be served upon the insurer or its agent for service of process stating the time and place of the hearing and the conduct, condition, or ground upon which the commissioner would make his or her order. The hearing shall occur not less than 20 days, nor more than 30 days after notice is served upon the insurer or its agent for service of process.

(2) If the commissioner determines that an insurer's immediate removal from the list is necessary to protect the public or an insured or prospective insured of the insurer, or, in the case of an application by an insurer to be placed on the list which is being denied by the commissioner, the commissioner may issue an order pursuant to paragraph (1) without prior notice and hearing. At the time an order is served pursuant to this paragraph to an insurer on the list, the commissioner shall also issue and serve upon the insurer a statement of the reasons that immediate removal is necessary. Any order issued pursuant to this paragraph shall include a notice stating the time and place of a hearing on the order, which shall be not less than 20 days, nor more than 30 days after the notice is served.

(3) Notwithstanding paragraphs (1) and (2), in any case where the commissioner is basing a decision to remove an insurer from the list, or deny an application to be placed on the list, on the failure of the insurer or applicant to comply with, meet or maintain any of the objective criteria established by this section, or by regulation adopted pursuant to this section, the commissioner may so specify this fact in the order, and no hearing shall be required to be held on the order.

(4) Notwithstanding paragraphs (1) and (2), the commissioner may, without prior notice or hearing, remove from the list established pursuant to subdivision (f) any insurer that has failed or refused to timely provide documents required by this section,

1 or any regulations adopted to implement this section. In the case  
2 of removal pursuant to this paragraph, the commissioner shall  
3 notify all surplus line brokers of the action.

4 (h) In addition to any other statements or reports required by  
5 this chapter, the commissioner may also address to any licensee a  
6 written request for full and complete information respecting the  
7 financial stability, reputation and integrity of any nonadmitted  
8 insurer with whom the licensee has dealt or proposes to deal in the  
9 transaction of insurance business. The licensee so addressed shall  
10 promptly furnish in written or printed form so much of the  
11 information requested as he or she can produce together with a  
12 signed statement identifying the same and giving reasons for  
13 omissions, if any. After due examination of the information and  
14 accompanying statement, the commissioner may, if he or she  
15 believes it to be in the public interest, order the licensee in writing  
16 to place no further insurance business on property located or  
17 operations conducted within or on the lives of persons who are  
18 residents of this state with the nonadmitted insurer on behalf of  
19 any person. Any placement in the nonadmitted insurer made by a  
20 licensee after receipt of that order is a violation of this chapter.  
21 The commissioner may issue an order when documents submitted  
22 pursuant to subdivisions (c) and (d) do not meet the criteria of  
23 subdivisions (a) to (e), inclusive, or when the commissioner obtains  
24 documents on an insurer and the insurer does not meet the criteria  
25 of subdivisions (a) to (e), inclusive.

26 (i) The commissioner shall require, at least annually, the  
27 submission of records and statements as are reasonably necessary  
28 to ensure that the requirements of this section are maintained.

29 (j) The commissioner shall establish by regulation a schedule  
30 of fees to cover costs of administering and enforcing this chapter.

31 (k) (1) Insurance may be placed on a limited basis with insurers  
32 not on the list established pursuant to this section if all of the  
33 following conditions are met:

34 (A) The use of multiple insurers is necessary to obtain coverage  
35 for 100 percent of the risk.

36 (B) At least 80 percent of the risk is placed with admitted  
37 insurers or insurers that appear on the list of eligible nonadmitted  
38 insurers.

39 (C) The placing surplus line broker submits to the commissioner,  
40 or his or her designee, copies of all documentation relied upon by

1 the surplus line broker to make the broker's determination that the  
2 financial stability, reputation, and integrity of the unlisted insurer  
3 or insurers, are adequate to safeguard the interest of the insured  
4 under the policy. This documentation, and any other documentation  
5 regarding the unlisted insurer requested by the commissioner, shall  
6 be submitted no more than 30 days after the insurance is placed  
7 with the unlisted insurer for the initial placement by that broker  
8 with the particular unlisted insurer, and annually thereafter for as  
9 long as the broker continues to make placements with the unlisted  
10 insurer pursuant to this paragraph.

11 (D) The insured has aggregate annual premiums for all risks  
12 other than workers' compensation or health coverage totaling no  
13 less than one hundred thousand dollars (\$100,000).

14 (2) Insurance may not be placed pursuant to paragraph (1) if  
15 any of the following applies:

16 (A) The unlisted insurer has for any reason been objected to by  
17 the commissioner pursuant to this section, removed from the list,  
18 or denied placement on the list.

19 (B) The insurance includes coverage for employer-sponsored  
20 medical, surgical, hospital, or other health or medical expense  
21 benefits payable to the employee by the insurer.

22 (C) The insurance is mandatory under the laws of the federal  
23 government, this state, or any political subdivision thereof, and  
24 includes any portion of limits of coverage mandated by those laws.

25 (D) The insured is a multiple employer welfare arrangement,  
26 as defined in Section 1002(40)(A) of Title 29 of the United States  
27 Code, or any other arrangement among two or more employers  
28 that are not under common ownership or control, which is  
29 established or maintained for the primary purpose of providing  
30 insurance benefits to the employees of two or more employers.

31 (E) Unlisted insurers represent a disproportionate portion of the  
32 lower layers of the coverage.

33 (3) Nothing in this section is intended to alter any duties of a  
34 surplus line broker pursuant to subdivision (b) of Section 1765 or  
35 other laws of this state to safeguard the interests of the insured  
36 under the policy in recommending or placing insurance with a  
37 nonadmitted insurer.

38 (4) Placements authorized by this subdivision are intended to  
39 provide sophisticated insurance purchasers with a means to obtain  
40 necessary commercial insurance coverage from nonadmitted

1 insurers not listed by the commissioner in situations where it is  
2 not commercially possible to fully obtain that coverage from either  
3 admitted or listed insurers. This subdivision shall not be deemed  
4 to permit surplus line brokers to place with nonadmitted insurers  
5 common commercial or personal line coverages for insureds that  
6 can be placed with insurers that are admitted or listed pursuant to  
7 this section, whether the insured is an individual insured, or a group  
8 created primarily for the purpose of purchasing insurance.

9 (l) As used in this section:

10 (1) "Certified" means an originally signed or sealed statement,  
11 dated not more than 60 days before submission, made by a public  
12 official or other person, attached to a copy of a document, that  
13 attests that the copy is a true copy of the original, and that the  
14 original is in the custody of the person making the statement.

15 (2) "Domiciliary jurisdiction" means the state, nation, or  
16 subdivision thereof under the laws of which an insurer is  
17 incorporated or otherwise organized.

18 (3) "Domiciliary state of the syndicate's trust" means the state  
19 in which the syndicate's trust fund is principally maintained and  
20 administered for the benefit of the syndicate's policyholders in the  
21 United States.

22 (4) "IID" means the International Insurers Department.

23 (5) "Insurer" means (unless the context indicates otherwise)  
24 "nonadmitted" insurers that are either "foreign" or "alien" insurers,  
25 as those terms are defined in Sections 25, 27, and 1580, and  
26 syndicates whose members consist of individual incorporated  
27 insurers who are not engaged in any business other than  
28 underwriting as a member of the group and individual  
29 unincorporated insurers, provided all the members are subject to  
30 the same level of solvency regulation and control by the group's  
31 domiciliary regulator. The term "insurer" includes all nonadmitted  
32 insurers selling insurance to or through purchasing groups as  
33 defined in the Liability Risk Retention Act of 1986 (15 U.S.C.  
34 Sec. 3901 et seq.) and the California Risk Retention Act of 1990  
35 1991 (Chapter 1.5 (commencing with Section 125) of Part 4 of  
36 Division 1), except insurers that are risk retention groups as  
37 defined by those acts.

38 (6) "ISI" means Insurance Solvency International.

39 (7) "Licensee" means a surplus line broker as defined in Section  
40 47.

1 (8) “NAIC” means the National Association of Insurance  
2 Commissioners or its successor organization.

3 (9) “NAIIO” means the Nonadmitted Alien Insurer Information  
4 Office of the NAIC or its successor office.

5 (10) “State” means any state of the United States; the District  
6 of Columbia; a commonwealth, or a territory.

7 (11) “Verified” means a document or copy accompanied by an  
8 originally signed statement, dated not more than 60 days before  
9 submission, from a responsible executive or official who has  
10 authority to provide the statement and knowledge whereof he or  
11 she speaks, attesting either under oath before a notary public, or  
12 under penalty of perjury under California law, that the assertions  
13 made in the document are true.

14 (m) With respect to a nonadmitted insurer that is listed as an  
15 authorized surplus line insurer as of December 31, 1994, pursuant  
16 to Sections 2174.1 to 2174.14, inclusive, of Title 10 of the  
17 California Code of Regulations, this section shall not be effective  
18 until the subsequent expiration of the listing of that insurer. Nothing  
19 in the bill that amended this section during the 1994 portion of the  
20 1993–94 Regular Session is intended to repeal or imply there is  
21 not authority to adopt, or to have adopted, or to continue in force,  
22 any regulation, or part thereof, with respect to surplus line  
23 insurance which is not clearly inconsistent with it.